**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6837 OF 2006**
**IN**
**INTERIM MAINTENANCE APPLICATION NO.74 OF 2004**
**IN**
**PETITION NO.A-1638 OF 2003**

Mrs.Jaya Sanjiv Mehta ..Petitioner

V/s.

Mr.Sanjiv Baldev Mehta ..Respondent

Mr.S.C.Thatte for the petitioner
None for the respondent

**CORAM : S.C.DHARMADHIKARI, J.**

**DATE : 15TH JUNE, 2007**

**P.C.**

1. This petition was directed to be listed along with Writ Petition No.8585 of 2006.

2. Writ Petition No.6837 of 2006 is by the petitioner who is a wife of the respondent therein. The respondent in Writ Petition No.6837 of 2006 (husband) has filed Writ Petition No.8585 of 2006.

3. Both are aggrieved by an order dated 5th August, 2006 which has been passed in Interim Maintenance Application No.74 of 2004 in Petition No.A-1638 of 2003. The learned Judge of the Family Court, Bandra, Mumbai has awarded an interim maintenance in favour of the wife of Rs.3,000/- per month but the said amount is not directed to be paid from the date of the application filed for interim maintenance but from the date of the order.

4. Mr.S.C.Thatte appearing for the petitioner-wife submits that the respondent-husband had earlier preferred a petition for a divorce which was withdrawn by him and now he has filed a petition for restitution of conjugal right U/s.9 of the Hindu Marriage Act, 1955. In such a petition he applied for amendment to incorporate the same relief which was subject matter of earlier petition in which amendment has been granted.

5. The wife had no alternative but to apply again for maintenance and for travelling expenses. That application was preferred being Interim

Maintenance Application No.74 of 2004 upon which the impugned order has been passed.

6. Mr.S.C.Thatte submits that earlier the wife was granted interim maintenance of Rs.5000/- per month i.e.from the date of the earlier application for maintenance. There was nothing on record which would indicate that in the second petition by the respondent-wife maintenance should be reduced and she should be denied a relief which is otherwise available in law i.e.maintenance at the interim stage, from the date of the application.

7. Despite notice being served the husband is absent. So is his Lawyer Mr.R.T.Lalwani appears for him in Writ Petition No.6837 of 2006. The husband has filed his own petition being Writ Petition No.8585 of 2006 which is directed to be heard with the wife's Writ Petition.

8. It is not necessary to go into any wider issues at this stage in as much as the petitioner-wife has not received quantum of interim

maintenance of Rs.3,000/- even from the date of the order passed by the Family Court. It is open for the petitioner to adopt such proceedings against respondent-husband as are permissible in law for recovery of that amount. It would be open for her to apply also for striking of his defence or dismissal of the proceedings themselves. That application would proceed independently of the outcome of the present petition and of the Interim Maintenance Application. Similarly, it would be open for the wife to apply for enhancement in the maintenance amount from Rs.3,000/- per month and such an application, if preferred, should be dealt with by the Family Court on its own merits and in accordance with law.

9. For the present, all that I am inclined to do is to interfere with the impugned order the extent it denies maintenance from the date of the application for interim maintenance. There are no reasons assigned as to why it is so denied to the wife. More so, when the earlier order in her favour was operating from the date of the

application. The learned Judge has after adverting to the well settled principles ultimately did not assign any reason as to why he has denied maintenance from the date of the application. In the light of the aforesaid, Writ Petition No.6837 of 2006 is allowed to the extent that the petitioner wife shall be entitled to maintenance of Rs.3000/- per month from the date of the filing of Interim Maintenance Application No.74 of 2004. The other grievance of the petitioner in Writ Petition No.6837 of 2006 with regard to the certification of the Railway ticket by the Station Master is also justified. Once the petitioner-wife satisfies the Court/authority that she has travelled from Agra to Mumbai on a valid ticket and the ticket bears the name and the date of the train. So also details of her travel and is counter checked by the Ticket Collector, then, in my view the hypertechnical approach is unnecessary. It will be thereafter, for the respondent-husband to demonstrate that the petitioner-wife is claiming travelling expenses but she has not travelled by train from Agra to Mumbai on the relevant date. Therefore, it would not be

necessary for the wife to go and obtain an endorsement from the concerned Superintendent or Station Master upon arrival at Mumbai. The Writ Petition No.6837 of 2006 is allowed to the above extent.

**(S.C.DHARMADHIKARI, J.)**